THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 23563 OF 1997

Date: 08.03.2007

Between:

N. Chennamma and others.

... Petitioner

and

The Managing Director, APSRTC, Mushirabad, Hyderabad and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 23563 OF 1997

ORDER:

Aggrieved by the order of the second respondent dated 01.08.1983 as confirmed in appeal and in review dated 09.12.1991, the present writ petition has been filed.

In the proceedings of the second respondent dated 01.08.1983, the petitioner herein was imposed the penalty of deferment of his increment for a period of one year which would have the effect of postponing his future increments. It is not in dispute that this punishment was imposed without conducting any enquiry.

While Sri G. Vidyasagar, learned Counsel appearing on behalf of the petitioner would contend that punishment of withholding of one increment with cumulative effect cannot be imposed without conducting an enquiry and would rely on **Kulwant Singh Gill Vs. State of Punjab**[1], Sri P. Vinayakaswamy, learned Standing Counsel for the respondent corporation, would contend to the contrary and submit that the statutory regulations of the respondent corporation empowers the corporation to impose this penalty without conducting an enquiry. Learned Standing Counsel would contend that even otherwise the judgment of the Supreme Court in **Kulwant Singh Gill**[1], which was decided on 13.09.1990, could only have pospective application and would not apply to the present case inasmuch as the order of punishment impugned herein was passed as early as on 01.08.1983. Learned

Counsel would contend that the Punjab Civil Services (Punishment and Appeal) Rules 1970 which arose for consideration before the Supreme Court in **Kulwant Singh Gill**[1] is distinct from the A.P.S.R.T.C. Regulations under which the impugned order of punishment was passed. Learned Standing Counsel would also contend that the writ petition was liable to be dismissed on the ground of inordinate delay and latches.

In exercise of the powers conferred under Section 45(1) of the Road Transport Corporation Act, 1950, and after having received the previous sanction of the Government, the A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulation, 1967 were made. These Regulations have statutory force. Part IV of these regulations relates to Discipline and Penalties and Regulation 8 reads thus:

"The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

i. censure;

ii. withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;

iii. fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause (3);

iv. withholding of increments;

v. recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;

vi. suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;

vii. reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;

viii. removal from the service of the Corporation which does not disqualify from future employment;

ix. dismissal from the service of the Corporation which ordinarily disqualifies from future employment.

Regulation 12 prescribes the procedure for imposing penalties and reads as under:-

(1) No order imposing any of the penalties specified in items (1) to (vi) of clause (1) of regulation 8 shall be passed except after-

a. the employee concerned is informed in writing of the proposal to take action against him and of the allegations on which action is proposed to be taken and is given an opportunity to make any representation he may wish to make; and

b. such representation, if any, is taken into consideration by the authority imposing the penalty.

The record of proceeding in such cases shall include a copy of the intimation to the employee of the proposal to take action against him, a copy of the statement of allegations communicated to him, his representation, if any, the findings arrived at on the allegation with reasons therefore land the orders passed on the case by the authority competent to impose the penalty.

(2) No order imposing on an employee any of the penalties specified in items (vii) (viii) and (ix) of clause (1) of regulation 8 shall be passed except after an enquiry is held as far as may be in the manner hereinafter provided.

For imposition of any of the penalties specified in item (i) to (vi) of Regulation 8 no enquiry is contemplated under clause (1) of Regulation 12. For the penalties specified in items vii, viii and ix of clause (1) of Regulation 8 an enquiry is required to be held prior to imposition of punishment.

The question which arises for consideration is whether the penalty of withholding of one increment with cumulative effect would fall under item (iv) of Regulation 8(1) or under item (vii) of Regulation 8(1) of the A.P.S.R.T.C. Regulations, for if the punishment imposed is held to fall within item (iv), then no enquiry is required to be held prior to imposition of punishment, whereas if the punishment is referable to item (vii), since the impugned order of punishment was passed without an enquiry being held prior thereto, the order must necessarily be quashed. It is in this

context that reference can usefully be made to **Kulwant Singh Gill**[1] wherein a similar provision under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 fell for consideration and the Supreme Court observed:-

"……Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5 (iv). But sub-rule (v) postulates reduction to a lower stage in the time scale of pay for a specified period with further -directions as to whether or not the government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5 (v)? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5 (iv) of the Rules. But when penalty was imposed withholding two increments. e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in histime scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The a words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5 (v) of the Rules. It is undoubted that the division bench in Sarwan Singh v. State of Punjab, P. C. Jain, A. C.. speaking for the Division bench, while b considering similar question, in paragraph 8 held that the. stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in Rule 4. 12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent c authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall

operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly staling so. This preposterous consequence cannot be permitted to be permeated. Rule 5 (iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5 (v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal……"

In the present case also while withholding of increments of pay falls under item (iv) of Regulation 8(1) and no enquiry is required to be held prior to imposition of such a punishment, withholding of increments with cumulative effect is, in effect, an order which results in reduction in the time scale of pay which falls under item (vii) of Regulation 8(1) of the A.P.S.R.T.C. Regulations. Since Regulation 12(2) mandates an enquiry being held prior to imposition of the punishments specified in item (vii) of Regulation 8(1) and as the impugned order was passed without an enquiry in this regard the order of punishment must necessarily be quashed. The distinction which the learned Standing Counsel for the Corporation seeks to make between the Punjab Civil Services (Punishment and Appeal) Rules 1970 and the A.P.S.R.T.C Employees (Classification, Control and Appeal) Regulation, 1967

does not merit acceptance for a similar prescription is to be found in both the Punjab Civil Services (Punishment and Appeal) Rules 1970 and in the A.P.S.R.T.C. Regulations.

The next contention which requires examination is whether the judgment of the Supreme Court in **Kulwant Singh Gill**[1], would operate prospectively from 13.09.1990 or would apply prior thereto. It is necessary to note that the Supreme Court did not provide for the prospective application of its judgment in **Kulwant Singh Gill**[1].

In **Sarwan Kumar Vs. Madan Lal Aggarwal**[2], the Supreme Court observed:-

".....Invocation of the doctrine of prospective overruling is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. **This Court while deciding *Gian Devi Anand (1985)2 SCC683)* did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand (1985)2 SCC683)* would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand (1985)2 SCC683)* or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in *Gian Devi Anand (1985)2 SCC683)* by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous**....." (emphasis supplied)

This was reiterated by the Supreme Court in **M.A. Murthy Vs. State of Karnataka**[3]. To quote:-

"....**Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception**. The doctrine of prospective overruling which is a

feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath* v. *State of Punjab* **(**AIR 1967 SC 1643). In *Managing Director, ECIL* v. *B. Karunaka6 (1993)4 SCC 727)* the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta* v. *State of U.P (1997)5 SCC 201)* and *Baburam* v. *C.C. Jacob (1999)3 SCC 362*) **It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case No.(1997)4 SCC18)***. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside…..” (emphasis supplied)

The decision of the Supreme Court, enunciating a principle of law, is applicable to all cases irrespective of the stage of its pendency. The law laid down by the Supreme Court must be held to be the law from the inception, unless the Supreme Court itself indicates that its decision will operate prospectively. It is not open for Courts, including the High Court, to apply the law laid down by the Supreme Court only from the date on which the judgment came to be passed. In the absence of any direction by the Supreme Court, in **Kulvant Singh Gill**[1], that the law laid down therein is

prospective in operation, it is not for the High Court to hold that the law would apply prospectively only from 13.09.1990 i.e., from the date of the judgment in **Kulvant Singh Gill**[1].

Now the question of delay. While the order of the disciplinary authority is dated 01.08.1983, the petitioner had availed the remedies available to him under the A.P.S.R.T.C. Regulations and, eventually, the review was disposed of only on 25.03.1992. It is true that even from 25.03.1992 there has been a delay of five years in approaching this Court. As held in **Ram Chand Vs. Union of India**[4], the authorities, having failed to comply with the statutory regulations, cannot take advantage of their own wrong and contend that, since the petitioner had approached this Court belatedly, he was disentitled to the relief claimed. Even otherwise refusal to entertain a writ petition, on the ground of latches, is a matter of discretion. On the facts and circumstances of the present case when the punishment was imposed without conducting an enquiry, contrary to the statutory regulations in force and in gross violation of principles of natural justice, I see no reason to refuse to exercise discretion to entertain the writ petition or deny relief solely on the ground of latches. This contention also necessitates rejection.

The writ petition is allowed. However, in the circumstances, without costs.

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Date: 08.03.2007 RAMESH RANGANATHAN, J

MRKR

[1] 1991 Suppl(1) SCC 504

[2] (2003)4 SCC 147)

[3] (2003)7 SCC 517

[4] 1994(1) SCC 44